

FILED
2019 FEB 26 02:59 PM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 19-2-05401-8 SEA

JUDGE MELINDA YOUNG

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN THE COUNTY OF KING

KAITLYN CARLSON, NOLAN R. MORGAN,
DEREK ETTER, and JOHN AND JANE DOES
1-500, individually and on behalf of all other
similarly situated,

Plaintiffs,

vs.

PACIFIC NORTHWEST FONDUE, L.L.C., a
Washington limited liability company doing
business as THE MELTING POT FONDUE
RESTAURANT, MINISTRO MANAGEMENT
GROUP, INC., a Washington corporation;
LANE SCELZI, an individual; and JOHN
DOES 1-3,

Defendants.

NO. 19-2-05401-8 SEA

ANSWER TO PLAINTIFFS' CLASS
ACTION COMPLAINT FOR DAMAGES

In response to Plaintiff KAITLYN CARLSON, NOLAN MORGAN, DEREK ETTER
and JOHN and JANE DOES 1-500's ("Plaintiffs") Class Action Complaint for Damages
("Complaint"), Defendants PACIFIC NORTHWEST FONDUE, LLC, MINISTRO
MANAGEMENT GROUP, INC., and LANE SCELZI ("Defendants") answer and allege as
follows:

I. INTRODUCTION

1.1 Answering paragraph 1.1 of the Complaint, Defendants deny.

ANSWER TO PLAINTIFFS' CLASS
ACTION COMPLAINT FOR DAMAGES - 1

**GORDON REES SCULLY
MANSUKHANI, LLP**
701 Fifth Avenue, Suite 2100
Seattle, WA 98104
Telephone: (206) 695-5100
Facsimile: (206) 689-2822

1.2 Paragraph 1.2 of the Complaint presents legal conclusions for which no answer is required, and on that basis Defendants deny the same. Insofar as any allegation requires an answer, Defendants deny the same.

II. THE PARTIES

2.1 Answering paragraph 2.1 of the Complaint, Defendants admit Plaintiff Kaitlyn Carlson was an employee of Pacific Northwest Fondue, LLC in King County, Washington. Defendants are without sufficient information to form a belief as to the truth of the allegations regarding Plaintiff's residence and therefore denies the same. As to any remaining allegations, Defendants deny the same.

2.2. Answering paragraph 2.2 of the Complaint, Defendants admit Plaintiff Derek Etter was an employee of Pacific Northwest Fondue, LLC in King County, Washington. Defendants are without sufficient information to form a belief as to the truth of the allegations regarding Plaintiff's residence and therefore denies the same. As to any remaining allegations, Defendants deny the same.

2.3 Answering paragraph 2.3 of the Complaint, Defendants admit Plaintiff Nolan Morgan was an employee of Pacific Northwest Fondue, LLC in King County, Washington. Defendants are without sufficient information to form a belief as to the truth of the allegations regarding Plaintiff's residence and therefore deny the same. As to any remaining allegations, Defendants deny the same.

2.4 Answering paragraph 2.4 of the Complaint, Defendants admit.

2.5 Answering paragraph 2.5 of the Complaint, Defendants admit.

2.6 Answering paragraph 2.6 of the Complaint, Defendants deny.

2.7 Paragraph 2.7 of the Complaint presents legal conclusions for which no answer is required, and on that basis Defendants deny the same. Insofar as any allegation requires an answer, Defendants deny the same.

1 2.8 Answering paragraph 2.8 of the Complaint, Defendants are without sufficient
2 information to form a belief as to the truth of the allegations, and on that basis deny the same.

3 2.9 Answering paragraph 2.9 of the Complaint, Defendants admit.

4 2.10 Answering paragraph 2.10 of the Complaint, Defendants are without sufficient
5 information to form a belief as to the truth of the allegations, and on that basis deny the same.

6 **III. JURISDICTION AND VENUE**

7 3.1 Paragraph 3.1 of the Complaint presents legal conclusions for which no answer is
8 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
9 answer, Defendants deny the same.

10 3.2 Answering paragraph 3.2 of the Complaint, Defendants admit Plaintiffs
11 performed work for Defendants in King County, but denies any of the alleged wrongful acts
12 occurred.

13 3.3 Paragraph 3.3 of the Complaint presents legal conclusions for which no answer is
14 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
15 answer, Defendants deny the same.

16 3.4 Paragraph 3.4 of the Complaint presents legal conclusions for which no answer is
17 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
18 answer, Defendants deny the same.

19 3.5 Paragraph 3.5 of the Complaint presents legal conclusions for which no answer is
20 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
21 answer, Defendants deny the same.

22 3.6 Paragraph 3.6 of the Complaint presents legal conclusions for which no answer is
23 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
24 answer, Defendants deny the same.

1 **IV. STATEMENT OF FACTS APPLICABLE TO ALL CLAIMS**
2 **AND CAUSES OF ACTION**

3 4.1 Answering paragraph 4.1 of the Complaint, Defendants repeat and incorporate
4 their responses to paragraphs 1.1 through 3.6 above as if set forth fully herein.

5 4.2 Answering paragraph 4.2 of the Complaint, Defendants deny.

6 4.3 Answering paragraph 4.3 of the Complaint, Defendants admit.

7 4.4 Answering paragraph 4.4 of the Complaint, Defendants admit.

8 4.5 Answering paragraph 4.5 of the Complaint, Defendants deny.

9 4.6 Answering paragraph 4.6 of the Complaint, Defendants deny.

10 4.7 Answering paragraph 4.7 of the Complaint, Defendants admit.

11 4.8 Answering paragraph 4.8 of the Complaint, Defendants admit.

12 4.9 Answering paragraph 4.9 of the Complaint, Defendants admit.

13 4.10 Answering paragraph 4.10 of the Complaint, Defendants admit.

14 4.11 Answering paragraph 4.11 of the Complaint, Defendants admit.

15 4.12 Answering paragraph 4.12 of the Complaint, Defendants admit.

16 4.13 Answering paragraph 4.13 of the Complaint, Defendants admit.

17 4.14 Answering paragraph 4.14 of the Complaint, Defendants deny.

18 4.15 Answering paragraph 4.15 of the Complaint, Defendants admit.

19 4.16 Answering paragraph 4.16 of the Complaint, Defendants deny.

20 **V. SUBSTANTIVE ALLEGATIONS**

21 5.1 Answering paragraph 5.1 of the Complaint, Defendants repeat and incorporate
22 their responses to paragraphs 1.1 through 4.16 above as if set forth fully herein.

23 5.2 Paragraph 5.2 of the Complaint presents legal conclusions for which no answer is
24 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
25 answer, Defendants deny the same.

1 5.3 Answering paragraph 5.3 of the Complaint, the webpage and postings by the
2 Office of Labor Standards speak for themselves. The remaining allegations present legal
3 conclusions for which no answer is required, and on that basis Defendants deny the same.
4 Insofar as any allegation requires an answer, Defendants deny the same.

5 5.4 Paragraph 5.4 of the Complaint presents legal conclusions for which no answer is
6 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
7 answer, Defendants deny the same.

8 5.5 Answering paragraph 5.5 of the Complaint, Defendants are without sufficient
9 information to form a belief as to the truth of the allegations, and therefore deny the same.

10 5.6 Paragraph 5.6 of the Complaint presents legal conclusions for which no answer is
11 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
12 answer, Defendants deny the same.

13 5.7 Paragraph 5.7 of the Complaint presents legal conclusions for which no answer is
14 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
15 answer, Defendants deny the same.

16 5.8 Answering paragraph 5.8 of the Complaint, Defendants are without sufficient
17 information to form a belief as to the truth of the allegations, and therefore deny the same.

18 5.9 Paragraph 5.9 of the Complaint presents legal conclusions for which no answer is
19 required, and on that basis Defendants deny the same. Insofar as any allegation requires an
20 answer, Defendants deny the same.

21 5.10 Paragraph 5.10 of the Complaint presents legal conclusions for which no answer
22 is required, and on that basis Defendants deny the same. Insofar as any allegation requires an
23 answer, Defendants deny the same.

1 5.11 Paragraph 5.11 of the Complaint presents legal conclusions for which no answer
2 is required, and on that basis Defendants deny the same. Insofar as any allegation requires an
3 answer, Defendants deny the same.

4 5.12 Paragraph 5.12 of the Complaint presents legal conclusions for which no answer
5 is required, and on that basis Defendants deny the same. Insofar as any allegation requires an
6 answer, Defendants deny the same.

7 5.13 Answering paragraph 5.13 of the Complaint, Defendants deny.

8 **VI. CLASS ACTION ALLEGATION**

9 6.1 Answering paragraph 6.1 of the Complaint, Defendants repeat and incorporate
10 their responses to paragraphs 1.1 through 5.13 above as if set forth fully herein.

11 6.2 Answering paragraph 6.2 of the Complaint, Defendants deny.

12 6.3 Answering paragraph 6.3 of the Complaint, Defendants deny.

13 6.4 Answering paragraph 6.4 of the Complaint, Defendants deny.

14 6.5 Answering paragraph 6.5 of the Complaint, Defendants deny.

15 6.6 Answering paragraph 6.6 of the Complaint, Defendants deny.

16 6.7 Answering paragraph 6.7 of the Complaint, Defendants deny.

17 6.8 Answering paragraph 6.8 of the Complaint, Defendants deny.

18 **VII. SPECIFIC STATEMENT OF CLAIMS AND CAUSES OF ACTION**

19 7.1 Answering paragraph 7.1 of the Complaint, Defendants repeat and incorporate
20 their responses to paragraphs 1.1 through 6.8 above as if set forth fully herein.

21 **CAUSES OF ACTION APPLICABLE TO THE CLASS**
22 **COUNT 1 – STATUTORY VIOLATIONS**

23 7.2 Answering paragraph 7.2 of the Complaint, Defendants deny.

24 7.3 Paragraph 7.3 of the Complaint presents legal conclusions for which no answer is
25 required, and on that basis Defendants deny the same. Insofar as any allegation requires an

1 answer, Defendants deny the same.

2 7.4 Answering paragraph 7.4 of the Complaint, RCW 49.46.090 speaks for itself, and
3 no answer is required. Insofar as any allegation requires an answer, Defendants deny the same.

4 7.5 Answering paragraph 7.5 of the Complaint, Defendants deny.

5 7.6 Answering paragraph 7.6 of the Complaint, RCW 49.52.050 speaks for itself, and
6 no answer is required. Insofar as any allegation requires an answer, Defendants deny the same.

7 7.7 Answering paragraph 7.7 of the Complaint, RCW 49.52.070 speaks for itself, and
8 no answer is required. Insofar as any allegation requires an answer, Defendants deny the same.

9 7.8 Answering paragraph 7.8 of the Complaint, Defendants deny.

10 **CAUSES OF ACTION APPLICABLE TO THE CLASS**
11 **COUNT 2 – INJUNCTIVE AND DECLARATORY RELIEF**

12 7.9 Answering paragraph 7.9 of the Complaint, Defendants deny.

13 **INDIVIDUAL CAUSE OF ACTION**
14 **COUNT 3 – UNJUST ENRICHMENT**

15 7.10 Answering paragraph 7.10 of the Complaint, Defendants deny.

16 **INDIVIDUAL CAUSE OF ACTION**
17 **COUNT 4 – FAILURE TO PROVIDE EMPLOYEES WITH WRITTEN NOTICE OF**
18 **RIGHTS UNDER SUBSECTION 14.19.045**

19 7.11 Answering paragraph 7.11 of the Complaint, MWO 14.19.45 speaks for itself, and
20 no answer is required. Insofar as any allegation requires an answer, Defendants deny the same.

21 7.12 Answering paragraph 7.12 of the Complaint, MWO 14.19.45B speaks for itself,
22 and no answer is required. Insofar as any allegation requires an answer, Defendants deny the
23 same.

24 7.13 Answering paragraph 7.13 of the Complaint, Defendants deny.

25 7.14 Answering paragraph 7.14 of the Complaint, Defendants deny.

1 **VIII. DAMAGES**

2 8.1 Answering paragraph 8.1 of the Complaint, Defendants repeat and incorporate
3 their responses to paragraphs 1.1 through 7.14 above as if set forth fully herein.

4 8.2 Answering paragraph 8.2 of the Complaint, Defendants deny.

5 8.3 Answering paragraph 8.3 of the Complaint, Defendants deny.

6 8.4 Answering paragraph 8.4 of the Complaint, Defendants deny.

7 8.5 Answering paragraph 8.5 of the Complaint, Defendants deny.

8 8.6 Answering paragraph 8.6 of the Complaint, Defendants deny.

9 **IX. REQUEST FOR RELIEF**

10 10.1 Answering the Prayer for Relief section of the Complaint, Defendants deny that
11 Plaintiffs or any purported class member are entitled to any of the damages and/or relief requested
12 from Defendants.

13 10.2 Except as specifically admitted herein, Defendants deny each and every allegation in
14 the Complaint.

15 **XIII. AFFIRMATIVE DEFENSES**

16 By way of further answer to the Complaint, and without waiving any allegations previously
17 denied, Defendants assert the following affirmative defenses:

18 1. The Complaint fails to state a claim upon which relief can be granted.

19 2. The Complaint fails to allege sufficient facts or claims to support the recovery of
20 the damages and relief sought in the Complaint.

21 3. Pending further discovery, some or all of Plaintiffs' or any purported class
22 members' claims are barred in whole or in part by the applicable Statutes of Limitations.

23 4. Plaintiffs' or any purported class members' injuries and damages, if any, were
24 caused or contributed to by their own acts, omissions, breaches of contract, and/or misconduct.
25

1 5. Plaintiffs' or any purported class members' injuries and damages, if any, were
2 caused or contributed to by the acts, omissions, breaches of contract or legal duties, and/or
3 misconduct of third parties over whom Defendant had no control.

4 6. Plaintiffs' or any purported class members' claims are barred in whole or in part to
5 the extent each has failed to mitigate their damages, if any.

6 7. Plaintiffs' or any purported class members' claims and damages are barred in
7 whole or in part because Defendants acted in good faith and with proper justification at all
8 relevant times.

9 8. Plaintiffs' or any purported class members' claims are barred in whole or in part by
10 assumption of risk, contributory/comparative negligence, waiver, consent, estoppel, laches,
11 and/or unclean hands.

12 9. Plaintiffs' or any purported class members' claims are barred in whole or in part to
13 the extent each has unreasonably failed to take advantage of preventive and corrective
14 opportunities provided by Defendants or otherwise failed to avoid harm.

15 10. Some or all of the claims asserted in the Complaint are frivolous and without
16 merit such that Defendants should be awarded their costs and attorneys' fees.

17 11. To the extent the Complaint seeks exemplary damages under RCW 49.52.070,
18 Defendants' alleged actions were not willful or made with intent to deprive any employee of wages.

19 12. Class action treatment is not appropriate and no class should be certified, as
20 Plaintiffs have not met and cannot meet the requirements of CR 23. This failure includes, without
21 limitation, that Plaintiffs cannot prove the joinder of members is impracticable, that common
22 questions of fact and law exist or predominate, that their claims, defenses or damages are typical of
23 the alleged class, that they can adequately represent the rights of others, and that a class action is
24 superior to other available methods to adjudicate these matters.

13. Defendants reserve their right to amend this Answer to allege additional affirmative defenses and pursue other relief as may be warranted by discovery.

XIV. PRAYER FOR RELIEF

WHEREFORE, having fully answered the allegations contained in Plaintiffs' Complaint for Damages, and having asserted their affirmative defenses, Defendants pray that:

1. The Court refuse to certify a class pursuant to CR 23 as requested by Plaintiffs;
2. Plaintiffs and the purported class members take nothing by this Complaint;
3. The Court dismiss all claims asserted in this Complaint against Defendants with prejudice;
4. The Court award to Defendants the costs, expenses, and attorneys' fees incurred by Defendants to defend against the claims asserted in the Complaint; and
5. For such other and further relief as this Court may deem just, equitable, and proper.

Dated: February 26, 2019

GORDON REES SCULLY MANSUKHANI, LLP

By: /s/ Derek A. Bishop
David W. Silke, WSBA, #23761
Derek A. Bishop, WSBA, #39363
Attorneys for Defendants Pacific Northwest
Fondue, L.L.C., The Melting Pot Fondue
Restaurant, Ministro Management Group, Inc.,
and Lane Scelzi
Gordon Rees Scully Mansukhani, LLP
701 Fifth Avenue, Suite 2100
Seattle, WA 98104
Phone: (206) 695-5100
Fax: (206) 689-2822
Email: dsilke@grsm.com
Email: dbishop@grsm.com

1 **CERTIFICATE OF SERVICE**

2 The undersigned declares under penalty of perjury under the laws of the State of
3 Washington that on this day I served a true and correct copy of the foregoing document on the
4 following by the method/s shown:
5

6 **Attorneys for Plaintiffs:**

7 Timothy W. Emery
8 Patrick B. Reddy
9 Emery | Reddy, PLLC
600 Stewart Street, Suite 1100
Seattle, Washington 98101
10 Tel.: 206.442.9106
11 Fax: 206.441.9711

☐ U.S. Mail Postage Prepaid
☒ King County Electronic Filing System
☐ Hand Delivery
☒ Email: emeryt@emeryreddy.com
redhyp@emeryreddy.com
jennifer@emeryreddy.com

12 DATED this 26th day of February, 2019.

13 /s/ Karen Hansen
14 Karen Hansen, Legal Assistant
15 kahansen@grsm.com
16
17
18
19
20
21
22
23
24
25

ANSWER TO PLAINTIFFS' CLASS
ACTION COMPLAINT FOR
DAMAGES - 11

**GORDON REES SCULLY
MANSUKHANI, LLP**
701 Fifth Avenue, Suite 2100
Seattle, WA 98104
Telephone: (206) 695-5100
Facsimile: (206) 689-2822